No. 18

In the Supreme Court of the United States

OCTOBER TERM, 1954

DAVID FRIEDBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the Court of Appeals (R. 769-770) is reported at 207 F. 2d 777.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1953 (R. 769), and a petition for rehearing was denied November 30, 1953 (R. 774). The petition for a writ of certiorari was filed December 28, 1953, and was granted June 7,

1954. (R. 775.) The jurisdiction of this Court rests on 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED

The petitioner was convicted of wilfully attempting to evade his income taxes for the years 1945, 1946, and 1947. The Government's proof of unreported net income was based upon evidence of a source of taxable income in excess of that reported and a net worth-expenditures computation showing that increases in the petitioner's net worth plus non-deductible expenditures made by him were substantially in excess of the income reported on his tax returns. The questions presented are:

1. Whether the evidence established the petitioner's net worth at the start of the taxable years in question sufficiently to present an issue for jury determination.

2. Whether the trial court committed reversible error in permitting the Special Agent to state his reasons for not including currency on hand in his computation of petitioner's net worth as of December 31, 1941.

3. Whether the trial court committed reversible error in a supplemental instruction to the jury.

STATUTE AND RULES INVOLVED

INTERNAL REVENUE CODE OF 1939:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U. S. C. 1946 ed., Sec. 145.)

FEDERAL RULES OF CRIMINAL PROCEDURE:

Rule 30. *Instructions.*

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests

shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 52. *Harmless Error and Plain Error.*

* * * * *

(b) *Plain Error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

STATEMENT

On December 15, 1950, an indictment in four counts was filed against petitioner in the United States District Court for the Southern District of Ohio, charging that he had wilfully attempted to evade and defeat his income taxes for the years 1944, 1945, 1946 and 1947 by filing false and fraudulent tax returns, in violation of Section 145(b) of the Internal Revenue Code of 1939. The indictment alleged that he had reported an income tax

liability of $152 for 1944, $39 for 1945, $47[illegible] for 1946, and $1,355.57 for 1947, whereas his correct tax liability for those years was $4,559.71, $7,694.21, $7,447.80, and $19,590.02. (R. 1-3.) After a jury trial petitioner was found not guilty on Count One, involving the year 1944, and guilty on Counts Two, Three, and Four. (R. 654-655.) On April 8, 1952, the District Court imposed concurrent sentences of imprisonment for eighteen months on each of the three counts and a fine of $10,000 on Count Two. (R. 668-669.) The judgment of conviction was affirmed unanimously by the United States Court of Appeals for the Sixth Circuit. (R. 769-770.)

A. Theory of the Government's Case

The indictment charged that petitioner had attempted to evade income taxes by underreporting his net taxable income. To prove that petitioner had realized net taxable income in excess of that reported, the Government introduced evidence tending to establish that there were large annual increases in petitioner's net worth in 1944, 1945, 1946 and 1947; that these increases represented current taxable income; and that the amounts of taxable income thus shown were considerably greater than the amounts reported by petitioner in his income tax returns. The amounts of net taxable income indicated by the net worth computations, as compared with the amounts disclosed by the returns, were as follows (R. 121-128; Govt. Exs. 1-B, 1-C, 1-D and 1-E, Tr. 13-14, R. 671-683; Govt.

Ex. 2, Appendix, *infra*, p. 57, R. 37-38, 691-692):

Year	Per Net Worth Computation	Per Return	Excess
1944	$15,640.68	$2,735.97	$12,904.71
1945	21,669.18	2,012.36	19,656.82
1946	23,035.34	4,943.93	18,091.41
1947	42,276.91	7,223.05	35,053.86

B. Evidence to Support the Government's Case

1. *Petitioner's books and records.*—Aside from interest income reported in 1947, petitioner's income tax returns for the years in question reflected income from only one source, the Buckeye Tailoring Company, a business acquired by petitioner in 1941 and operated by him as an individual. (R. 61, 64-66; Govt. Exs. 1-B, 1-C, 1-D and 1-E, Tr. 13-14, R. 671-683.) The wholesale end of the business, involving the production of garments on order from other dealers, was operated under the name of Buckeye Tailoring Company. The retail end, involving the production of garments on direct order from consumer-customers, was operated under the name of American Mill Tailors. Petitioner's employees performed the cutting operations, but the sewing and finishing of garments was let out to independent concerns to whom the materials were shipped under the name of Jacobson Tailoring Company. One set of books, kept in the name of Buckeye Tailoring Company, ostensibly contained a record of all income from both wholesale and retail operations. (R. 41, 45-52.) Until November 30, 1944, these books were kept by an employee

named Mary Appl, but after that date they were kept by petitioner's wife. (R. 38-40, 278.)

The petitioner's business records consisted of a cash receipts book, a retail order book, wholesale invoices, and other miscellaneous records. (R. 149-150, 378.) Receipts from sales of made-to-order garments, both wholesale and retail, were entered in the cash book under the customer's name. After 1944, no detailed records were kept of receipts from alterations, repairs, cleaning and pressing, or sales of ready-to-wear stock garments. At one time petitioner told the agent that income from alterations was not recorded because it was used to pay small bills; at another time he said it was used to repay loans made to the business. At the trial petitioner and his wife testified that these miscellaneous receipts were included in the so-called Friedberg loan items which appeared in the cash book as described below. (R. 95-96, 294, 377-378.)

In auditing the cash receipts book the agent discovered that during 1945 there were thirty-four entries, involving a total of $9,175, which were credited to an account called "Loan—D. Friedberg"; that during 1946 there were sixty-four such entries, involving $20,750; and that during 1947 there were fifty-five such entries, totaling $22,180. There were no such entries in 1944. Petitioner told the agent that these entries reflected funds which he had taken out of his safe deposit box and placed in the business. (R. 96-97, 575.) The investiga-

tion showed, however, that petitioner had entered his safe deposit box on only four dates corresponding to the entry of sums of money as Friedberg loans. (R. 96.) Later, when it appeared from the agent's further investigation that at least a number of these so-called loan items might really reflect income rather than petitioner's loans to his business, petitioner was unable to explain the matters disclosed by the investigation which suggested this conclusion.[1] Petitioner never told the agent that these loan entries actually represented income, but, as he stresses here (Br. 12), this was the explanation accepted and pressed by petitioner's counsel at the trial. (R. 169-170, 172-176.) Petitioner's wife testified that these entries listed as "loans" consisted of both income receipts and loans by her

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[1] The agent had examined original bank deposit slips corresponding to the Friedberg loan entries and found that while the total of each such deposit agreed with an entry in the cash receipts book the deposit slips contained listings of many checks which were not specifically recorded on petitioner's books. The surnames of the persons who gave the checks appeared on the deposit slips. (R. 97-98.) When asked why there were checks deposited which were not recorded in the book, petitioner stated that he could not understand this. Later that day petitioner called the agent and stated that the checks in question were accommodation items which he had cashed as a convenience to customers. (R. 98.) In attempting to verify this, the agent was able to contact some of the individuals with unusual surnames. (R. 98-108.) Fifteen of these individuals testified that the checks in question were given by them to petitioner in payment for garments purchased from him, and one stated that his check was for alteration work. (See stipulation, R. 69-70.)

to the business, though the whole was allegedly reported as petitioner's income. (R. 280-285.)

Petitioner's income tax returns were prepared by an accountant from figures furnished by petitioner, without audit of the books and records. (R. 4-6.) In the work sheets prepared by petitioner and given to the accountant gross receipts were shown in a lump sum, and the agent testified that he was unable to determine how this sum was arrived at. (R. 170.) The gross receipts from the wholesale and retail business, as shown in petitioner's cash book, were substantially less than the gross income reported on the returns. After adding the so-called Friedberg loan items, the total amounts shown by petitioner's books and records were still somewhat less than the amounts shown on the returns. (R. 159-168.) Because of the inadequacy of the records, the agent was unable to trace the so-called loan items into the gross income figures reported on the returns. (R. 177, 166-168, 176, 185-186.)

2. *The net worth computation.*—Having concluded that petitioner's records were inadequate as a basis for determination of his income tax liability, and finding it impossible to determine the identity of all his retail customers (R. 177), the agent reconstructed his income on the basis of annual increases in net worth.[2] (R. 115.) Net worth was

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[2] A Certified Public Accountant called as a witness by petitioner agreed that, from the records available, it would not be possible to make a complete audit for the years 1944, 1945, 1946 and 1947 except on a net worth basis. (R. 629.)

computed as of December 31, 1941, and as of the end of each succeeding year through 1947. (R. 122-128.) The asset items included cash in banks, securities, household furnishings, real estate and the investment in the tailoring business. (Govt. Ex. 2, *infra*, p. 57.)

At the outset of the investigation in October, 1947, the petitioner agreed to permit the Treasury agents to examine the contents of a safe deposit box rented by him and his wife in the name of David and Frances Handler. (Handler was Mrs. Friedberg's maiden name.) The box was inventoried in petitioner's presence and was found to contain $53,625 worth of United States Government bonds and $19,600 in currency. Of the bonds $200 worth had been purchased in 1942, and the remaining $53,425 had been purchased during the years 1943 through 1946. The currency was in fifteen envelopes or bundles, eleven of which (containing a total of $14,000) bore dates, and four of which (containing $5,600) bore no dates. Of the eleven dated envelopes, four (containing a total of $2,000) bore 1945 dates, two (containing a total of $3,000) bore 1946 dates, and five (containing a total of $9,000) bore no year, but only day and month dates. (R. 79-83, 131; Govt. Ex. 13, R. 68, 740-742.)

In computing net worth the agent included the Government bonds as assets as of the end of the year in which they were purchased. (R. 213-225.) For the years 1941, 1942, 1943 and 1944 no cash on hand was included because the agent found no evidence of such cash. (R. 139-142; Govt. Ex. 2,

infra, p. 57.) As of December 31, 1945, there was included the $2000 of currency found in petitioner's safe deposit box in 1947 in four envelopes bearing dates in November and December, 1945. As of December 31, 1946, there was included $5,000 of the currency hoard, representing the $2,000 apparently placed there in 1945 and an additional $3,000 found in two envelopes bearing dates in 1946. The net worth computation as of December 31, 1947, included all of the currency found in the box on October 10, 1947 ($19,600), minus the cost of a bond purchased by petitioner between that date and the end of the year ($4,757.54). This adjustment was necessary in order to avoid possible duplication because the bond was included as an asset and could have been purchased from the currency hoard. (R. 116, 206-207; Govt. Ex. 2, *infra*, p. 57.)

Based on the net worth increases plus non-deductible expenditures not reflected in assets (*supra*, pp. 5-6), the income tax liability of petitioner for each of the years in question was recomputed. The amounts of tax so determined, and the amounts reported on petitioner's returns, were as follows (R. 204):

Year	*Amount Reported*	*Amount Recomputed*
1944	$152.00	$4,559.71
1945	39.00	7,694.21
1946	470.00	7,447.80
1947	1,355.57	19,590.02

3. *The net worth starting point evidence.*—Although the first prosecution year was 1944, the Government used December 31, 1941, as the starting point for its net worth computations. In order to substantiate the determination of starting point net worth and to negative the existence of any substantial cash hoard at the starting point, the Government introduced evidence tracing petitioner's financial history from 1922 to the prosecution years. It was established that petitioner and others formed a partnership known as the Buckeye Tailoring Company in 1918, and incorporated the venture in 1922, and that petitioner worked for the company continuously from 1922 to 1941, when it was dissolved because it was unable to pay its bills. When the business was first organized each co-owner normally drew $40 a week as salary, but later this was increased to $50 a week. At times they drew more than that, but $50 a week was the average. (R. 28-33, 36). The receiver testified that the corporation was dissolved in February, 1941, the assets sold, and the proceeds distributed under court order; that petitioner acquired the assets of the corporation for $650; and that the general creditors received nothing. (R. 64-66.)

The petitioner filed no income tax return for 1922. For the years 1923, 1924, and 1925 he paid taxes of $18, $31.13, and $7.58, respectively, on original and amended returns. For 1926 and 1927 he filed non-taxable returns. During the years 1928 through 1941 he filed no income tax returns except for the years 1930 and 1937, when he filed non-

taxable returns. (R. 72-76; Govt. Ex. 1-F, Tr. 13, 14, R. 684-685.) His income tax returns for 1942 and 1943 disclosed net incomes of $2,400 and $2,587, respectively. Petitioner stated on these two returns that he was a salesman employed by the Buckeye Tailoring Company, and reported his income as salary. There was no indication on the returns that he was the owner of the business. (Govt. Ex. 1-G, Tr. 13-14, R. 686-687; Govt. Ex. 1-H, Tr. 13-14, R. 688-689.)

In January, 1931, petitioner borrowed $250 from a life insurance company, and in April and May, 1931, he repaid this sum. (Govt. Ex. 4-A, R. 15, 722.) In September, 1931, he borrowed $300 from the same company and, three months later, an additional $400. This $700 obligation was paid off in seven installments and was extinguished in May, 1935. (Govt. Ex. 4-B, R. 15, 723.)

In June, 1932, petitioner ceased making principal payments on a mortgage note on which he was obligated to pay $30 per month plus interest on a $5,000 liability he assumed in connection with the purchase of realty in 1929. He continued to make interest payments until the mortgagee brought a foreclosure suit late in 1934, and the property was ordered sold. Petitioner then moved for postponement of the sale. In March, 1935, the court stated that the sale would be postponed for six months provided the petitioner would pay the costs ($10.25), the current taxes, and the sum of $10 per month to the mortgagee for six months. The petitioner "by his counsel thereupon announced in

open court that he would not be able to comply with those terms", whereupon the court overruled his motion to postpone the sale. (R. 192; Govt. Ex. 29, R. 191, 744-757.)

In March, 1936, a printing company obtained a judgment against petitioner for $13.76. The writ was returned March 31, 1936, marked "Nothing found to levy on". Execution was reissued early in 1940, and on March 7, 1946, the writ was returned "No goods or chattels found whereon to make a levy". (Govt. Ex. 5-A, R. 17, 724-725.)

In July, 1936, proceedings were brought against petitioner to foreclose the mortgage on the home in which he had formerly lived. Between that time and the actual sale he evidently did his best to save this property, for he made three payments to the mortgagee, one of $103 and two of $50 each. When the property was finally sold in September, 1937, a deficiency judgment against petitioner of $3,570.38 was awarded to the Home Owners Loan Corporation. On August 19, 1939, the writ of execution was returned with the notation "for want of goods or chattels, lands and tenements upon which to levy this writ returned nothing found". In September, 1939, the petitioner settled the $3,570.38 judgment by paying $100 to the Home Owners Loan Corporation and was released from further liability. (R. 20-23, 27-28, 189, 494-495; Govt. Ex. 6-A, R. 18, 726-727; Govt. Ex. 6-B, R. 18, 729-731.)

On October 20, 1939, petitioner submitted to the National Life Insurance Company an application

for a Federal Housing Administration loan of $7,600, together with a net worth statement signed by him in which he listed total assets of $9,200, including cash on hand of $150, and total liabilities of $500. The form contained a statement that to the best of petitioner's "knowledge and belief, the statements, information, and descriptions contained herein are in all respects, true, correct, and complete." (Govt. Ex. 7, R. 19, 732A-732B.)

Special Agent Clager testified that he had made an audit of petitioner's cash receipts books for the years 1941, 1942, and 1943 with particular reference to funds invested in the tailoring business from non-income sources, i.e., funds in the nature of advances or loans; that the books disclosed six such loans in 1941, totaling $2,700, and four such loans in 1942, totaling $1,250; that of this $3,950 so invested, $2,758.55 came from a savings account in the name of D. F. or F. F. Handler, $600 came from another savings account, $500 represented a loan to petitioner from one Nathan Weiss, and the remaining $91.45 came from an unknown source. (R. 110-115.) It was stipulated that the savings account in the name of Handler actually belonged to petitioner and his wife. (R. 132.) This account being the major source of advances to the business, Clager went a step further and anaiyzed the deposits from June 24, 1939 (when it was opened), through the year 1943. He testified that there were sixteen deposits into the account during this period, aggregating $8,319.86; that $7,024.97 of this was in the form of checks which he was

able to identify;[3] that $1,094.81 came from the tailoring business, according to petitioner's books; and that as to $200.08 (consisting mainly of a $200 deposit on June 25, 1942) he was unable to ascertain the source of the funds. (R. 132-136; Govt. Ex. 2-C, R. 37-38, 693-702.)

During the years 1943 and 1944 petitioner acquired $7,781.25 worth of Government bonds. As to $6,800 of the purchase price there were contemporaneous charges to his checking account of substantially the amounts involved, which tended to show that the bonds were paid for by check. (R. 214-215.) In the later years, however, large acquisitions were made with funds which the agent was unable to trace. During 1945, 1946 and 1947 petitioner acquired a total of $61,000 of series G and coupon bonds (some of which were purchased in the name of F. F. Handler); over $32,000 of the funds used for these purchases could not be traced. (R. 215-220; Govt. Ex. 2-U, R. 38, 719-721.)

C. Petitioner's Contentions at the Trial

Petitioner and his wife testified that when they were married in 1915 they had $3,000 in cash between them and continued to save money in the form of cash until 1943, when they began to invest it; that the fund had grown to $15,000 by 1922, $50,000 by 1936, and "far in excess of" $60,000 by

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[3] One deposit made in July, 1941, in the amount of $1,030 consisted of a check issued to petitioner by his brother in settlement of petitioner's share of his mother's estate. It was stipulated that this was the only inheritance received by him from his mother. (R. 37, 134.)

1938; that it was always kept in secret places (*e.g.*, cedar chests and safe deposit boxes) and was considered the wife's money, even though earned by petitioner, because she had saved it; that the wife kept a record of the balance on a piece of paper in her handbag but could not state just how much the savings amounted to at any particular time; and that the large apparent net worth increases between 1944 and 1947 merely reflected the investment of these currency savings. (R. 266-275, 305-322, 329-334, 418-419, 430, 463-465, 469-473.) On cross-examination petitioner admitted that he had considered the cash as much his as his wife's (R. 479, 512) and refused to testify as to the approximate percentage of his income he had been able to save on the grounds that he did not "want to incriminate myself any more" (R. 463-464).

SUMMARY OF ARGUMENT

I

Petitioner's main argument is that the jury's verdict, sustained by both courts below, was not warranted by the evidence. The Government failed, he argues, to show that his alleged net worth increases for the years 1945, 1946, and 1947 reflected anything but the investment of a large hoard of cash accumulated years earlier. The argument is refuted by the record.

By his own admission, petitioner's net worth in October of 1939 was $8,700, including only $150 in cash on hand. The reliability of this admission was confirmed by evidence reaching back from 1939 to

1922 showing that petitioner's circumstances had been continuously modest, even straitened, throughout this period. Against this evidence, the jury, if it was not compelled, was certainly entitled to disbelieve the testimony of petitioner and his wife that they had accumulated well over $60,000 in idle cash on hand by 1938.

The assets disclosed by the Government's investigation—bank accounts, real property, business investment, securities—at the end of 1941 revealed a net worth of $11,768.88, an increase of $3,000 over October, 1939. It was shown that even this increase was considerable in the light of the fact that petitioner had income too low to require filing of returns in 1939, 1940, and 1941. Similarly, the net worth figures shown at the end of 1942 ($12,858.53) and 1943 ($19,911.93) were solidly grounded in the evidence.

Thus, there was a firm starting point for the computations showing huge net worth increases over the prosecution years 1944 through 1947. And other evidence reinforced the conclusion that these were the years of large, unreported earnings. In prior years, petitioner's expenditures and business investments were traceable to withdrawals from interest-bearing bank accounts; in 1945, 1946, and 1947 (the years for which the jury convicted), sizeable purchases of Government bonds—over $32,000 worth—were made with funds which could not be traced. It was in these later years, too, that petitioner rented under an assumed name a safe deposit box into which he found it necessary to make fre-

quent entries. These facts confirmed the inference that respondent was receiving and dealing in large amounts of unreported cash income during 1945, 1946, and 1947.

In short, the net worth increases during the years for which petitioner was convicted, and the finding that they represented current income unreported in a wilful attempt to evade taxes, are clearly supported by the evidence. The starting point of the computations, more solidly supported than the comparable showing upheld in *United States* v. *Johnson*, 319 U. S. 503, was convincingly established, defeating petitioner's single contention—that the Government failed to negative the possibility that the stock of cash and bonds he possessed in 1947 reflected only a hoard of idle cash accumulated a decade earlier. The jury's verdict was plainly proper.

II

The Government agent in charge of investigating petitioner's tax returns was properly permitted to explain why the net worth computations showed no undeposited cash on hand at the end of 1941. It is well settled that in a criminal tax case such an agent may testify to the details of a net worth summary and explain its preparation. *United States* v. *Johnson*, 319 U. S. 503, 519; *Gendelman* v. *United States*, 191 F. 2d 993, 996-997 (C.A. 9th), certiorari denied, 342 U.S. 909.

The application of this established rule could not possibly have prejudiced petitioner. The agent acknowledged that he had no personal knowledge

as to whether petitioner had cash on hand at the close of 1941. And the trial court carefully charged the jurors that they were sole judges of the facts, free to reject the testimony of experts as well as other witnesses. It is as true here as it was in *United States* v. *Johnson, supra,* that "No issue was withdrawn from the jury. * * * The jury in this case could not possibly have been misled into the notion that they must accept the calculations of the government expert any more than that they were bound by the calculations made by the defense's expert based on the defendants' assumptions of the case." 319 U. S. at 519.

III

Equally without merit is petitioner's final argument—that his conviction should be reversed because in a supplemental instruction to the jury the trial court expressed the hope that they would "make a sincere effort to compromise and adjust [their] differences and reach a verdict, if possible." The single word "compromise," read in its immediate context and in the context of the full and careful instructions in which the defense could find no ground for objection, resulted in no prejudice. And even if the assertion that there was error were far more persuasive than it is, it would face the decisive answer that petitioner's counsel not only failed to object to the instruction, but expressly and deliberately waived any such objection in his subsequent argument for a new trial. Rule 30, F.R.

Crim. P.; *Johnson* v. *United States,* 318 U. S. 189, 200-201.

ARGUMENT

I

The Evidence Firmly Established the Petitioner's Net Worth at the Start of the Years in Question

A jury, under instructions which were without dispute correct in defining the quantum of proof necessary for conviction, found petitioner guilty. The trial court and the court of appeals have sustained that verdict. It is elementary that the concurrence of both lower courts in such a finding of fact carries an "assuring strength" (*Delaney* v. *United States,* 263 U. S. 586, 590) which can be overcome only by the clearest showing of error. In this Court, petitioner undertakes the difficult burden of urging as his primary ground for reversal that the evidence was insufficient to support the verdict. (Pet. Br., Point I, pp. 10-26).

We submit that there is no defect in the detailed proof the Government adduced which could warrant the extraordinary result for which petitioner contends. It is clear, of course, that the verdict petitioner attacks "must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States,* 315 U. S. 60, 80. See, also, *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 254; *Mortensen* v. *United States,* 322 U. S. 369, 374; *Abrams* v. *United States,* 250 U. S. 616, 619; *Gorin* v. *United States,* 312 U. S. 19, 32; *Goldman* v.

United States, 245 U. S. 474, 477; *Burton* v. *United States*, 202 U. S. 344, 373. The record in this case amply satisfies this test.

A. *The theory of the prosecution*

The Government's proof that petitioner had wilfully attempted to evade substantial income taxes showed that in each of the four prosecution years the sum of his net worth increases and personal, non-deductible expenditures far exceeded the income reported on his tax returns. Such net worth evidence has been universally recognized in the federal appellate courts as a valid method of proving wilful attempts to evade income taxes. *United States* v. *Johnson*, 319 U.S. 503, 517;[4] *Smith* v. *United States*, 210 F. 2d 496 (C.A. 1st), certiorari granted, 347 U.S. 1010; *United States* v. *Norris*, 205 F. 2d 828 (C.A. 2d); *United States* v. *Vassallo*, 181 F. 2d 1006 (C.A. 3d); *Bell* v. *United States*, 185 F. 2d 302 (C.A. 4th), certiorari denied,

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[4] In the *Johnson* case, *supra*, the method of proof was referred to as the expenditures method, because the Government's computations treated all of Johnson's non-deductible disbursements as expenditures without regard to whether they increased his net worth. Actually, the bulk of Johnson's expenditures represented investments in realty, and if they had been labelled net worth increases rather than expenditures, the result of the computations would have been precisely the same. Petitioner is incorrect in his statement (Br. 3) that in the instant case "No attempt was made * * * to show unusual expenditures." It was proved that he had spent $61,000 in three years (1945, 1946, and 1947) to purchase U.S. Government bonds, Series G and coupon. (R. 215-220; Govt. Ex. 2, *infra*, p. 57).

340 U.S. 930; *Sasser* v. *United States*, 208 F. 2d 535 (C.A. 5th); *Gariepy* v. *United States*, 189 F. 2d 459 (C.A. 6th); *United States* v. *Chapman*, 168 F. 2d 997 (C.A. 7th), certiorari denied, 335 U.S. 853; *Mitchell* v. *United States*, 208 F. 2d 854 (C.A. 8th), certiorari denied, 347 U.S. 1012; *Barcott* v. *United States*, 169 F. 2d 929 (C.A. 9th), certiorari denied, 336 U.S. 912; *Hooper* v. *United States*, 213 F. 2d 30 (C.A. 10th).

The simple theory of the method is that if a taxpayer realizes during a particular year an increase in net worth which is not attributable to gifts, inheritances, or other non-taxable sources, the increase constitutes a measure of taxable income. If the increase in net worth substantially exceeds reported income, an inference is justified that the taxpayer has received income which he failed to report. It is fundamental that in order to make a *prima facie* case the Government must establish the taxpayer's net worth at the beginning of the period in question with a reasonable degree of certainty; otherwise the increase might be more apparent than real. *Sasser* v. *United States, supra*, p. 537; *Bell* v. *United States, supra*, p. 308; *Brodella* v. *United States*, 184 F. 2d 823, 824 (C.A. 6th). Proof of a taxpayer's visible assets and his liabilities at the beginning of the prosecution years may not establish firmly the starting point net worth, because the taxpayer may have had other assets, particularly currency, hidden from view. *Bryan* v. *United States*, 175 F. 2d 223 (C.A. 5th), affirmed, 338 U.S. 552; *United States* v. *Fenwick*, 177 F. 2d

488 (C.A. 7th). There must be solid evidence to bolster the conclusion that the taxpayer has been given credit for all the assets he owned at the beginning point. Such evidence usually consists of an admission from the taxpayer or the results of an investigation into his financial history prior to the prosecution years. If such evidence is not available and presented, the Government fails to sustain its burden of proof because it has not foreclosed the possibility that what appear on the surface to be net worth increases are in fact merely the result of a change in the form of previously acquired assets. *Bryan* v. *United States, supra.* But where the Government does present such evidence, its burden is simply to make a *prima facie* case. Its evidence must be sufficiently substantial to warrant a jury in concluding that the defendant did not in fact have concealed assets not revealed in the starting point computation. The Government is not required to refute all conceivable speculation as to the source of a taxpayer's funds or to prove the precise amount of his undeposited cash on hand at the starting point. *Gariepy* v. *United States, supra,* p. 463; *Schuermann* v. *United States,* 174 F. 2d 397, 399 (C.A. 8th), certiorari denied, 338 U.S. 831; *Bell* v. *United States, supra,* p. 308. To impose a stricter and more meticulous burden of proof on the prosecution would, as the Court stated in *Johnson,* "be tantamount to holding that skilful concealment is an invincible barrier to proof." 319 U.S. at 518.

B. *The evidence of petitioner's guilt.*

Petitioner urges (Br. 10-11), as "the sole basic factual issue in the trial," that he had accumulated before the prosecution years a hoard of cash which accounted for the huge net worth increases proved for those years by the Government's evidence.[5] Isolating this narrow issue, petitioner gives a partial account of the evidence, a fragment at a time (Br. 15-19); arguing the favorable, or harmless, inferences that might conceivably have been drawn from these bits of evidence, he concludes that the jury should not have been permitted to decide the issue of his guilt or innocence. The conclusion is refuted when the full picture the jury saw is reassembled.

1. As we have shown (*supra*, pp. 12-16), the investigation of petitioner's financial history extended back over the years to 1922. Deferring for a moment our reconsideration of the significance of this background (see pp. 30-34, *infra*), our argument on the evidence begins with the significant financial statement signed by petitioner and submitted to an insurance company in October, 1939, long before the investigation leading to this prose-

[5] All the items in the Government's net worth computation, proved by appropriate evidence, were stipulated to be correct, except for the items of undeposited cash on hand and bonds. See Pet. Br. 3-4, 10-11, R. 120-121. It was these items which posed the issue whether they represented net worth increases in the prosecution years or merely, as petitioner testified (*supra*, pp. 16-17), an accumulation of wealth saved in undeposited cash (*i.e.*, cash kept as such in a box) by 1938.

cution. That statement, it will be recalled, was prepared in support of an application for a Federal Housing Administration loan of $7,600. Affirming, directly above his signature, that the statement was "in all respects, true, correct, and complete," petitioner showed a net worth of $8,700, including $150 in cash on hand. (Govt. Ex. 7, R. 19, 732A-732B.).[6]

Petitioner is correct, of course, when he observes (Br. 25) that the jury was not "required to draw only one inference" from the financial statement of October, 1939. No one so contends. The point, however, is that while it was not *required,* the jury was plainly entitled to conclude that petitioner's statement in 1939, rather than his assertions during the trial and the investigation preceding it, correctly reflected his net worth as of October, 1939. And this inference was made particularly compelling by the evidence reaching back over the years to 1922 which tended strongly to refute the possibility that petitioner's wealth was greater in 1939 than his statement showed.[7] See pp. 12-16, *supra,* and pp. 30-34, *infra.*

In addition to the October 1939 statement show-

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[6] Petitioner argues (Br. 25) that this statement is incomplete because he did not include certain securities. The record shows, however, that they were in the name of A. Wayne Friedberg, petitioner's son, and that petitioner considered them his son's property. (R. 413; Govt. Ex. 2-N, R. 38, 702, 703-718.)

[7] Treating the obviously damaging statement of October, 1939, in some detail (Br. 23-26), petitioner argues in effect that the jury should have rejected it as false or incomplete.

ing a net worth of $8,700, it was proved that petitioner filed no income tax returns for 1939, 1940, and 1941. (R. 76; Govt. Ex. 1-F, Tr. 13-14, R. 684-685.) On petitioner's own testimony that he always filed a return when one was due (R. 435, 519-520), this indicated that his net income was less than $2,500 in 1939, less than $2,000 in 1940, and less than $1,500 in 1941.[8] In addition to this income, he received an inheritance of $1,030 in July, 1941. (R. 37, 134.) And on December 31, 1941, the first date covered by the Government's net worth computation (Appendix, *infra*, p. 57), his net worth was shown to be $11,768.88, an increase of $3,000 over October

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Even if it were appropriate here to undertake the jury's task *de novo*, the argument would be unpersuasive. For example, consider the contention (Br. 25) that the financial statement must have been casual and unreliable because it did not matter to F.H.A whether "petitioner had $9,200.00 or $92,000.00," since the mortgaged property would be the prime security. Just a month before he submitted this financial statement, petitioner had settled a $3,570.38 deficiency judgment in favor of the Home Owners Loan Corporation for $100 (*supra*, p. 14). He must have been keenly aware that the mortgaged property did not afford the mortgagee complete protection against loss and that the declaration of a substantial net worth would enhance his chance of getting the loan. Thus, if it were profitable now to start from the premise that the 1939 statement was false, it is apparent that petitioner at that time had reason to overstate rather than to understate his net worth. But the futility of such speculation at this point is plain. What is decisive here is that the jury was entirely justified in believing that petitioner's signed statement correctly showed his net worth in October, 1939.

[8] Internal Revenue Code of 1939, Sec. 51(a)(2); Revenue Act of 1940, c. 419, 54 Stat. 516, Sec. 7(a); Revenue Act of 1941, c. 412, 55 Stat. 687, Sec. 112(a).

1939.[9] This determination was solidly supported. If the financial statement of October, 1939, correctly reflected petitioner's net worth at that time —and it was for the jury to decide whether it did (*United States* v. *Norris*, 205 F. 2d 828, 829 (C.A. 2d))—it can readily be seen that he would have been unable to accumulate a net worth substantially greater than $11,768.88 by the end of 1941, because (1) the only non-income funds he received in the interim consisted of a check for $1,030 from his mother's estate, and (2) his income during that period was obviously too low to permit of more than extremely modest savings.

Similarly, carrying the picture to the beginning of 1944, the first of the four prosecution years, the Government showed petitioner's net worth to be $12,858.53 at the end of 1942 and $19,911.93 at the end of 1943. These computations revealed an increase in net worth of $1,089.65 for 1942, or almost

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[9] This net worth figure and the figures for the end of 1942, 1943, and 1944 included no cash on hand. What this means, of course, is not that the petitioner was without a single cent in his pockets, but that the sum he carried with him or kept in drawers at home (the precise amount of which could not be ascertained) was not substantial enough to affect the computation. On the other hand, the conservatism of the agents in not including figures which were not precisely determinable worked in the opposite direction to an extent which was probably more than compensatory. Thus, in listing petitioner's living expenses for each year (expenditures obviously includible in reconstructing his income), the computations showed only insurance premiums, taxes, rentals, and other expenses paid by check. (Govt. Ex. 2, Appendix, *infra*, p. 57.) This omitted undoubtedly sizeable amounts spent in cash over the years for food, entertainment, etc.

50% of petitioner's reported net income of $2,400, and an increase of $7,053.40 for 1943, far exceeding his reported net income of $2,587 for that year.[10] (Govt. Exs. 1-G and 1-H, Tr. 13-14, R. 686-689; Govt. Ex. 2, Appendix, *infra*, p. 57.)

Thus, beginning with the financial statement of 1939, there was a firm basis for the Government's net worth computations to the end of 1943.[11] Had there been no other evidence to attest to the completeness and correctness of the agents' determination of the starting-point net worth, the trial judge could properly have submitted the case to the jury. *United States* v. *Norris*, 205 F. 2d 828, 829 (C. A. 2d); *United States* v. *Skidmore*, 123 F. 2d 604, 608 (C. A. 7th), certiorari denied, 315 U. S. 800; *United States* v. *Potson*, 171 F. 2d 495, 498 (C. A. 7th); *Gariepy* v. *United States*, 189 F. 2d 459, 462 (C. A. 6th); *Banks* v. *United States*, 204 F. 2d 666, 668-669 (C. A. 8th), certiorari denied, 346 U. S. 857,

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[10] Thus the Government established a pattern of evasion beginning in 1943. *Malone* v. *United States*, 94 F. 2d 281 (C.A. 7th), certiorari denied, 304 U.S. 562; *Emmich* v. *United States*, 298 Fed. 5 (C.A. 6th), certiorari denied, 266 U.S. 608. Aside from this, however, it is plain that petitioner could not possibly have secreted any currency out of his $2,587 reported income because he enjoyed an increase in visible assets of $7,053.40 during that year.

[11] It should be noted at this point that the narrow factual issue as it was finally posed at the trial left outside the area of controversy the question of petitioner's net worth increases between 1939 and 1943. For the cash hoard on which the defense relied was asserted by petitioner and his wife to have been fully collected by 1938, thus allegedly accounting for the visible net worth increases for the prosecution years 1944 through 1947.

denial of certiorari vacated, 347 U. S. 1007. Compare *Bryan* v. *United States*, 175 F. 2d 223, 226-227 (C. A. 5th), affirmed, 338 U. S. 552.

2. It is unnecessary, however, to rest only upon the evidence summarized above. The Government's proof went much further and laid before the jury the results of a painstaking investigation of petitioner's finances from 1922 to the indictment years. This proof served (1) to reinforce the conclusion that petitioner's net worth was no greater in October, 1939, than the $8,700 shown on his critical financial statement at that time, and (2) by the same token, to refute the claim of petitioner and his wife that they had accumulated over $60,000 in idle cash on hand by 1938 which accounted for the large net worth increases proved for the later period from 1944 through 1947.

The evidence showed that petitioner filed no income tax return for 1922 and paid only nominal income taxes for the years 1923, 1924, and 1925; that he filed non-taxable returns for 1926 and 1927; and that during the entire period from 1928 through 1941 he filed no income tax returns except for 1930 and 1937, when he filed non-taxable returns. (R. 72-77; Govt. Ex. 1-F, Tr. 13-14, R. 684-685.) On the basis of his admission at the trial (R. 435, 519-520) that he had always filed a return when one was due, his failure to file returns before 1932 indicated an annual net income of less than $3,500,[12] and his

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[12] Revenue Act of 1926, c. 27, 44 Stat. 9, Sec. 223; Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 51.

failure between 1932 and 1938 indicated an annual net income of less than $2,500.[13] These facts were obviously relevant and weighty in deciding whether it was conceivable that petitioner had accumulated a large hoard of currency, either by 1938 as he and his wife testified, or by the end of 1943, the point marking the outset of the years covered by the indictment. *Leeby* v. *United States*, 192 F. 2d 331, 333 (C. A. 8th); *Graves* v. *United States*, 191 F. 2d 579, 584 (C. A. 10th); *Gariepy* v. *United States*, 189 F. 2d 459, 463 (C. A. 6th); *Hanson* v. *United States*, 186 F. 2d 61, 66 (C. A. 8th); *Schuermann* v. *United States*, 174 F. 2d 397, 399 (C. A. 8th), certiorari denied, 338 U. S. 831; *Lisansky* v. *United States*, 31 F. 2d 846, 851 (C. A. 4th), certiorari denied, 279 U. S. 873.

The light thrown on petitioner's income during the two decades preceding the prosecution years by his tax filing history was enhanced by direct testimony from a former business associate who, like petitioner, had been one of the co-owners of the Buckeye Tailoring Company from 1922 to 1941. He testified that each of the owners drew an average salary of $50 a week during those years, and that the business became defunct early in 1941. (R. 28-33, 36.)

There was a wealth of other evidence to show that petitioner had no cash resources during the

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[13] Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 51; Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 51; Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 51; Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 51.

depression of the 1930's. In 1931 he borrowed small sums on three different occasions from his life insurance company, and it was not until May, 1935, that he managed to liquidate the last of these obligations. (Govt. Exs. 4-A and 4-B, R. 15, 722-723.) By mid-1932 he was no longer able to continue the principal payments of $30 per month on a real estate mortgage, and two years later the mortgagee brought a foreclosure suit. Petitioner moved the court for postponement of the sale, and the court agreed to grant the motion if petitioner would pay the current taxes and the total sum of $70.25 to the mortgagee in instalments over the coming six months. Petitioner replied that he was unable to comply with those terms, whereupon his motion to postpone was overruled. (R. 192; Govt. Ex. 29, R. 191, 744-757.) Early in 1936 he was unable to satisfy a $13.76 judgment, which was returned "Nothing found to levy on." (Govt. Ex. 5-A, R. 17-18, 724-725.) In September, 1937, the mortgage on his former home was foreclosed, the property sold, and a deficiency judgment awarded against him to the Home Owners Loan Corporation in the amount of $3,570.38. Petitioner had tried vainly to save this property by making three payments between the institution of proceedings and the sale. In September, 1939, the writ of execution was returned "* * * nothing found," and he then settled the $3,570.38 judgment by paying $100 to the mortgagee in return for a release from further liability. (R. 21-24, 27-28, 189, 494-495; Govt. Exs. 6-A and 6-B, R. 18, 726-731.)

Against the background of this mass of evidence, pointing irresistibly to the conclusion that petitioner was virtually without liquid assets through the entire depression of the 1930's, petitioner and his wife testified that they had been accumulating currency in secret repositories ever since 1915; that the hoard had grown to $15,000 by 1922, over $50,000 by 1936, and "far in excess of" $60,000 by 1938; that it was considered the wife's money, even though earned by petitioner, because she had saved it; and that it was not until 1943 that they began to remove the money from the safe deposit box and invest it. (R. 264-275, 329-334, 418-419, 430, 463-465, 469-473.) On the "sole basic factual issue" (Pet. Br. 10-11) thus joined, we think the Government's evidence was overwhelming. Even on the cold record, the evidence of petitioner's financial history shows convincingly that his wealth was slight throughout the 1930's. This conclusion was only strengthened by the efforts of petitioner and his wife to show a huge accumulation of undeposited cash by 1938 without showing any apparent source for such an accumulation. At the very least, the jury was entitled to believe petitioner's statement *ante litem motam* in October, 1939, showing his net worth as $8,700 (with $150 in cash on hand), rather than his testimony that by 1938 he had accumulated a store of cash far exceeding $60,000. Having resolved this conflict of testimony against petitioner, and having before it the Government's proof that there could have been no considerable accumulation of cash in the years from

1939 to 1943, the jury could properly draw the natural and logical inference that petitioner had no substantial amount of cash on hand as of December 31, 1943.[14]

3. In addition to petitioner's admission in 1939, his prior business and financial history, and his subsequent tax returns, other evidence covering the period after 1939 supported the Government's starting-point determination. The testimony for both the prosecution and the defense reflected a recognition that it would be significant in deciding whether petitioner and his wife had a large hoard of cash before 1943—or, as he claimed, before 1938—to discover whether and when any use was made of such cash. Here, again, the Government's detailed evidence served both to establish the correctness of the net worth computations and to refute convincingly the testimony for petitioner.

Petitioner's wife testified that from the time he became sole proprietor of his business in 1941, she advanced cash funds to the business because he "hadn't any credit." (R. 279.) Pitted against this assertion was the earlier testimony of the

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[14] The evidence on this point is stronger than that in the case of *United States* v. *Johnson*, 319 U.S. 503. Although Johnson was a professional gambler on a vast scale, the only evidence to foreclose the possibility that he had more cash than the Government gave him credit for was a statement "purported to have been made by" him (fixing his cash on hand at the beginning of 1932 at $78,000) plus his reported income and proved expenditures for the years intervening between 1932 and the prosecution years (1936 to 1939). See *United States* v. *Johnson*, 123 F. 2d 111, 125 (C.A. 7th), reversed on other grounds, 319 U.S. 503.

Government's special agent who had audited petitioner's cash receipt books for the years 1941, 1942, and 1943. This audit, which concentrated on funds invested in the business from sources other than current income, disclosed that there were six advances in 1941, totaling $2,700, four in 1942, totaling $1,250, and none in 1943. It was shown that of this $3,950 total, $2,758.55 came from a savings account held by petitioner and his wife in the name of D. F. or F. F. Handler (the wife's maiden name), $600 came from another savings account, $500 represented a loan to petitioner from one Weiss, and only $91.45 came from an unidentified source. (R. 110-115.) The use of funds drawn from interest-bearing savings accounts was at least some evidence from which the jury could reasonably infer that there was no store of idle cash available. See *Barcott* v. *United States*, 169 F. 2d 929, 932 (C. A. 9th), certiorari denied, 336 U. S. 912. And the jury could properly have found that this inference was fortified by the unpersuasive effort to show that accumulated cash on hand was used for purposes which were proved by documentary evidence to have been served by withdrawals from the bank.

Still further evidence served both to bear out the net worth computations and to show that petitioner was wilfully attempting to evade taxes during the years for which he was convicted. In 1943 and 1944, of petitioner's purchases of Government bonds costing some $7,700, $6,800 worth were accompanied by substantially simultaneous with-

drawals from his checking account in approximately the amounts of the purchases. (R. 214-215.) On the other hand, during the period from 1945 through 1947, he acquired a total of $61,000 in Government Series G and coupon bonds, and more than $32,000 of the funds used to pay for these bonds could not be traced. (R. 215-220; Govt. Ex. 2-U, R. 38, 719-721.) This evidence, too, supported the conclusion that petitioner realized large increases in net worth during the latter period, and that these did not reflect merely the disclosure of a huge cash accumulation prior to this period—prior even to 1938, according to petitioner and his wife.

The evidence of petitioner's safe deposit box activities is also noteworthy in this same connection. He evidently had no such box from 1935 until May, 1941, though he claimed to have far more than $60,000 in cash by the end of this period. In May, 1941. he rented a box which was entered only seven times from 1941 through 1943, five times in 1944, and six times between January 1 and April 12, 1945, when the box was surrendered. Meanwhile, on February 6, 1945, he rented a box at another bank in the name of David and Frances Handler, which was entered twenty-seven times in 1945, twenty-two times in 1946, and thirteen times in 1947. (R. 130-131; Govt. Exs. 12-A and 13, R. 67-68, 736-742.) Here was further proof of large acquisitions and dealings in cash during the years 1945 through 1947 rather than in the period ending a decade earlier to which he claimed this wealth was attributable. See *Schuermann* v. *United States,*

174 F. 2d 397 (C.A. 8th), certiorari denied, 338 U. S. 831; *Gariepy* v. *United States*, 189 F. 2d 459, 463 (C.A. 6th); *United States* v. *Boyer*, 110 F. Supp. 592, 597 (N.D. W. Va.).

We submit, in sum, that the evidence summarized above, together with the other evidence of fraud and concealment reviewed in our Statement,[15] amply justified the jury's verdict that petitioner had wilfully attempted to evade income taxes during the years 1945, 1946, and 1947. Since it is the single factual issue petitioner raises, we have concerned ourselves primarily with the question

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[15] For example (see pp. 7-9, *supra*), the discrepancies between petitioner's books and income tax returns, the many false entries by which income was credited to a Friedberg loan account rather than to sales, the proved falsity of petitioner's explanations of these manipulations to the Treasury agent, and the general inadequacy of his records to enable the agent to determine his true income tax liability. It should be noted here that petitioner errs in contending (Br. 7, 11-12, 32) that the Government undertook to establish unreported income by proving the falsity of the Friedberg loan entries. Since the gross receipts reported on the returns exceeded the sum of the Friedberg loan entries and the gross receipts recorded as such in the books (R. 162-168), and since there was no way to determine how petitioner had arrived at his reported gross receipts figures (R. 170), the agent could not possibly determine whether the Friedberg loan items had been reported as income (R. 166-170, 176, 186). However, evidence of the so-called Friedberg loans went to the element of wilfulness, by showing (1) the falsity of petitioner's books, and (2) the falsity of his explanations of their falsity. This evidence that the books were incorrect and unreliable also obviated the possible argument that the net worth method could not be used without such a showing. Though the argument —raised in the pending case of *Holland* v. *United States*, No. 37—is erroneous in our view, it has been accepted by some courts. See, *e.g.*, *United States* v. *Riganto*, 121 F. Supp. 158 (E.D. Va.).

whether the starting point of the Government's computations was sufficiently established, *i.e.*, whether the jury could reasonably conclude that petitioner's opening net worth was correctly shown in the Government's proof and had not included any such large hoard of cash as petitioner claimed to have accumulated long before the prosecution years. On this issue, we believe, the evidence in the record more than satisfies the requirement of substantiality by which the jury's verdict is to be tested on appeal.

II

The Trial Court Properly Permitted the Treasury Agent to Explain Why He Excluded Cash on Hand in His Computation of Petitioner's Net Worth at the End of 1941

Petitioner contends (Br. 26-28) that the trial court erred in permitting Special Agent Clager to state his reasons for not having included currency on hand in his computation of petitioner's net worth as of December 31, 1941. The facts bearing on this issue are as follows:

The agent testified on direct examination that he had prepared a statement of petitioner's net worth as of the end of 1941 and the end of each succeeding year through 1947; that he had listed all of the assets and liabilities disclosed by the investigation; and that at the end of 1941 those assets consisted of cash in banks, securities, investment in the Buckeye Tailoring Company, household furnishings, and unimproved realty. (R. 115-119; Govt. Ex. 2, *infra*, p. 57.) On cross-examination the agent admitted that if he had omitted any figures from the

computation the entire statement would be inaccurate. (R. 137-138.) When defense counsel asked whether he had credited petitioner with any currency at the end of 1941, he stated that he had not (R. 138) and then, pursuant to the court's ruling that he might explain his answer, said (R. 139):

> I did not include currency at the end of the year 1941 because my investigation disclosed no evidence which would permit me to put such a figure of currency in my schedule.

Later, on redirect examination, the agent was permitted to explain in more detail why he had excluded currency from his computation. He testified that his investigation disclosed that petitioner had borrowed money in 1931 at 6 per cent interest and had not repaid it until 1935; that he had refinanced his home in 1933 through the Home Owners Loan Corporation and later had settled a deficiency judgment of about $3,000 for $100; that two other deficiency judgments had been obtained against petitioner during the 1930's in connection with mortgage foreclosures; that in October, 1939, petitioner had filed a financial statement with a life insurance company in connection with a loan, in which he stated that he had cash on hand of $150; that he (the agent) had examined petitioner's sources of capital as shown by his records for 1941 and 1942 and had found no indication of currency from an undisclosed source; and that on the basis of this investigation he could see no reason for including a substantial amount of cash on hand in

his computation of petitioner's net worth at the end of 1941. (R. 188-190.)

Petitioner argues (Br. 27-28) that this testimony was in the nature of an argument to the jury, and that it was improper because it permitted the witness to invade the jury's province by stating his conclusion on the ultimate issue.[16] We submit that the agent was not stating a conclusion on the ultimate issue but was explaining his reasons for preparing Government's Exhibit 2 as he had. It is well settled that in a criminal tax case the agent preparing a net worth summary may testify as to its details and explain its preparation. *United States* v. *Johnson*, 319 U. S. 503, 519; *Gendelman* v. *United States*, 191 F. 2d 993, 996-997 (C.A. 9), certiorari denied, 342 U. S. 909; *Bateman* v. *United States*, 212 F. 2d 61, 68 (C.A. 9); *Banks* v. *United States*, *supra*, pp. 670-671. And the ultimate issue was not whether there was substantial cash on hand at the end of 1941, but whether all of the evidence proved beyond a reasonable doubt that petitioner had wilfully attempted to evade and defeat his income taxes. The element of cash on hand con-

[16] Petitioner also contends (Br. 27) that Clager was not an expert witness, but no such contention was made at the trial, nor was any of his testimony objected to on that ground. And in the Court of Appeals (Appellant's Br. 28) it was specifically conceded that Clager was an expert. Clager had forty-five academic credit hours in accounting at Ohio State University and had served as a Special Agent for six years at the time he gave his testimony. (R. 92, 137.) He was in full charge of the investigation and testified as an expert in the same manner that the agent testified in the *Johnson* case, 319 U.S. 503, 519.

cerned only one item—though a crucial one—of petitioner's net worth, and was therefore a supporting or evidentiary matter.

It was defense counsel who opened the door to this testimony by questioning the agent on the point and insisting upon an answer, although it was crystal clear from his testimony on direct examination that he had included no currency in 1941. (R. 116-119). Surely the witness had a right, as the court held (R. 117), to "state the factual background upon which he arrived at his net worth conclusion." We submit that in asking these questions on cross-examination defense counsel necessarily assumed the risk that the court might permit the witness to explain his answers, and that the explanation might not please him.[17]

It is clear, in any event, that the other testimony of the Government's agent and the court's instructions gave ample assurance that petitioner would not be prejudiced by the testimony he invited and then attacked. The agent acknowledged on the stand that he had no personal knowledge as to whether petitioner had cash in his safe deposit box at any time (R. 141-143).[18] And the trial court carefully charged the jury that they were the sole

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[17] Petitioner's trial counsel was apparently not much concerned about the possibility that Clager's testimony on this issue might prejudice the jury, for he later put the same sort of questions to another agent, got the same sort of response, and interposed no objection. (R. 205-206.)

[18] Clager was not present when two agents saw the $19,600 in currency in petitioner's safe deposit box in October, 1947, not being assigned to the case at that time. (R. 79-80, 92.)

judges of the facts, the credibility of the witnesses, and the weight of the evidence (R. 641-642). Later in his charge, the judge made special reference to expert testimony in the following language (R. 651):

> * * * The law allows those skilled in that special field to express opinions, and upon a hypothetical state of facts given them, to say whether or not, according to their experience and research, a fact may, or may not, exist. But nevertheless, while such opinions are allowed to be given, it is entirely within the province of the jury to say what weight shall be given to them. Jurors are not bound by the testimony of experts. Their testimony is to be canvassed and weighed as that of any other witness. Just as far as their testimony appeals to your judgment, convincing you of its truth, you should adopt it, but the mere fact that a witness is called an expert, and gives opinions upon a particular point, does not necessarily obligate the jury to accept his opinions as to what the facts are.

In these circumstances, there is no basis for assuming that the jury was ever in doubt that it was for them to decide the controverted issues of fact. For the trial judge clearly understood and properly instructed on the rule that the correctness or credibility of materials underlying an expert's answers is not foreclosed by the expert's testimony or withdrawn from the independent determination of the

jury. *United States* v. *Johnson*, 319 U. S. 503, 519; *Gendelman* v. *United States*, 191 F. 2d 993, 997 (C. A. 9), certiorari denied, 342 U. S. 909; *Cave* v. *United States*, 159 F. 2d 464, 468 (C. A. 8), certiorari denied, 331 U. S. 847. The jury was clearly apprised of its freedom either to accept or reject the government agent's premises or conclusions, just as it rejected an elaborate reconstruction of income by petitioner's accountant (R. 585-600) which purported to show that there was no unreported income. Appropriate here is the language of this Court in the *Johnson* case rejecting a contention similar to the present petitioner's (319 U. S. at 519):

> * * * No issue was withdrawn from the jury. The correctness or credibility of no materials underlying the expert's answers was even remotely foreclosed by the expert's testimony or withdrawn from proper independent determination by the jury. The judge's charge was so clear and correct that no objection was made * * *. The worth of our jury system is constantly and properly extolled, but an argument such as that which we are rejecting tacitly assumes that juries are too stupid to see the drift of evidence. The jury in this case could not possibly have been misled into the notion that they must accept the calculations of the government expert any more than that they were bound by the calculations made by the defense's expert based on the defendants' as-

sumptions of the case. So long as proper guidance by a trial court leaves the jury free to exercise its untrammeled judgment upon the worth and weight of testimony, and nothing is done to impair its freedom to bring in its verdict and not someone else's we ought not to be too finicky or fearful in allowing some discretion to trial judges in the conduct of a trial and in the appropriate submission of evidence within the general framework of familiar exclusionary rules.

III

The Trial Court Committed No Reversible Error in His Supplemental Instruction to the Jury

The case was submitted to the jury on the afternoon of January 10, 1952. After four hours and twenty minutes of deliberation on January 10 and January 11 (R. 653), the court, in releasing the jury for lunch, stated (R. 654):

> The Court will stand in recess until one-thirty. The Court may say to the jury at this time that I want you to make an honest and sincere effort to reach an agreement as to the merits of this case. I do not want you to shirk your duty. I want you to be fair to the Government, the United States, and the defendant. Nevertheless, this case has taken many days to try, and I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible.

No objection was made to this supplemental instruction. At 3:15 p. m. the same day the jury returned its verdict. (R. 654-655).

In arguing a motion for a new trial one week later, defense counsel stated (R. 655):

> Your Honor was, beyond any question of a doubt, extremely fair to the defendant and to the Government. The charge, which involved a very intricate phase of law which is most difficult to grasp and understand, was entirely fair in every respect, and I am quite conscious of the fact that I am stating this into a record which is a permanent record * * *.

In his argument (R. 655-661) defense counsel made no reference to the supplemental instruction now complained of, although he had apparently mentioned it in his brief. The trial court commented on this omission, read the instruction aloud and asked whether defense counsel claimed error. (R. 661-662). The following exchange then took place (R. 662-663):

> The COURT: Counsel have been very fair with the Court throughout the trial of this case, and I want to commend you for that. You have been a partisan, but the Court will take judicial notice of the fact that you have a right to be a partisan. You have been eminently fair in your presentation to the Court; however, the Court was more or less disturbed as to how much importance you were attaching to the sua sponte instruction of the Court at the time

the jury went to lunch, as to whether or not you were seriously contending that the charge which the Court has just read to you, which was given at the luncheon period with the thought in mind that it might assist the jury in compromising and adjusting their differences and reaching a verdict, whether it be guilty or not guilty, was in error, whether or not you are insisting on that as a ground of error in this case.

Mr. SILLMAN: No, we are not.

The COURT: Then you are not insisting upon this special instruction which the Court has just called to your attention?

Mr. SILLMAN: I think it is correct. I think Your Honor gave it absolutely correct. I don't think we have at any place said it was incorrect.

The COURT: After quoting the Court's charge you say, "The jury apparently took literally the Court's suggestion and brought in this split verdict within a relatively short time after returning from lunch. Furthermore, in view of the nature of the evidence, the verdict of not guilty on count 1 has the effect of exonerating the defendant as to all counts of the indictment."

Of course, that goes on. I am interested alone in this instruction which the Court gave.

Mr. SILLMAN: I think your instruction was correct.

Petitioner now contends (Br. 29-33) that it was error for the judge to have used the word "compro-

mise" in the supplemental instruction. It resulted, he argues (Br. 29, 32), in an improperly induced "compromise verdict" of not guilty on Count I and guilty on the other three counts.[19] The argument fails, we submit, (1) because it is fallacious on its merits and (2) because it was consciously and deliberately waived in the trial court where it should have been raised.

1. Petitioner plucks a single word from context and argues at length that it was erroneous. Implicit in his argument is the contention that the jury paid more attention to the word "compromise" than to all of the other instructions combined. We think the word, first of all, must be read in the context of the sentence. The terms "hope", "sincere effort", "adjust your differences", and "if possible" obviously must be accorded some importance. And the sentence must be read in connection with the rest of the supplemental charge

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[19] Petitioner declares (Br. 6) that this verdict of not guilty on one count and guilty on the other three is "a rather strange decision in an increased net worth case." Actually, as we point out below (pp. 50-52), the record in this case makes such a resolution of the issues perfectly reasonable and understandable. And there is nothing in the nature of a prosecution of this type which requires as an abstract proposition that the jury's verdict be the same on all counts. Cf. *United States* v. *Skidmore*, 123 F. 2d 604 (C.A. 7th), certiorari denied, 315 U.S. 800; *United States* v. *Norris*, 205 F. 2d 828 (C.A. 2d); *Graves* v. *United States*, 191 F. 2d 579 (C.A. 10th); *Dawley* v. *United States*, 186 F. 2d 978 (C.A. 4th); *Remmer* v. *United States*, 205 F. 2d 277 (C.A. 9th), vacated and remanded on other grounds, 347 U.S. 227; *Holland* v. *United States*, 209 F. 2d 516 (C.A. 9th), pending on writ of certiorari, No. 37 this Term; *Mitchell* v. *United States*, 208 F. 2d 854 (C.A. 8th), certiorari denied, 347 U.S. 1012.

and the entire original charge, for whether a jury is properly instructed cannot be determined from consideration of a single paragraph, sentence, phrase, or word. *Boyd* v. *United States*, 271 U.S. 104, 107; *Moffitt* v. *United States*, 154 F. 2d 402, 405 (C.A. 10), certiorari denied, 328 U.S. 853; *United States* v. *Schiller*, 187 F. 2d 572, 574 (C.A. 2).

In his principal charge, the judge expounded the law so clearly and went to such lengths to protect the petitioner that he received high praise from defense counsel. (R. 655.) The court emphasized and re-emphasized that the burden was squarely on the Government to prove the defendant's guilt beyond a reasonable doubt, carefully explained to the jury its role and its responsibilities, and instructed that if the evidence could be reconciled with any reasonable theory consistent with innocence it was their duty to acquit. He explained the essential elements of the offenses charged and the nature and theory of the net worth method. He repeatedly stated that each count was to be tried just as though it were standing alone as a separate charge, and cautioned that a verdict of guilty could not be returned on any count unless the jury was satisfied that the Government had proved beyond a reasonable doubt each of the essential elements of the offense charged in that particular count. He stated that "all twelve jurors must agree upon the verdict returned" and that "No verdict can be returned unless you all concur in it." (R. 641-653.) No objection was made to any part of the charge.

Read in the light of the principal instructions, the single word complained of dwindles into insignificance. No juror could possibly have been misled into the notion that he must surrender his judgment in order to arrive at a prompt and unanimous verdict merely because the judge stated " * * * I hope you will make a sincere effort to compromise and adjust your differences and reach a verdict, if possible." (R. 654.) Surely no juror who had a reasonable doubt as to the petitioner's guilt would have forsaken his honest convictions on the latter three counts in exchange for a general agreement to acquit on Count I. An acquittal on one count would be cold comfort to a defendant found guilty on three others, and no juror could have been so stupid or so callous as to suppose anything to the contrary. The issues were simple and clearly drawn, and "any jury unable to maintain its individual and collective independence against such a charge, standing by itself, would have been no better than a sounding board for any judicial whisper." See *United States* v. *Samuel Dunkel & Co.*, 173 F. 2d 506, 509 (C.A. 2d). The court's use of the word "comprom'se" was, at the very worst, a minor aberration in a long trial. Presumably the petitioner would never have raised the issue if the court had suggested that the jury "reconcile and adjust" their differences. See *Allen* v. *United States*, 164 U.S. 492, 501; *United States* v. *Allis*, 73 Fed 165, 182-183 (C.C. E.D. Kans.), affirmed, 155 U.S. 117; *Weathers* v. *United*

States, 126 F. 2d 118 (C.A. 5th), certiorari denied, 316 U.S. 681.[20]

Petitioner errs in his suggestion that the verdict was no more than an arbitrary and unreasoned compromise. Apart from the dispositive point that a jury's verdict is not required to be consistent (*Dunn* v. *United States*, 284 U.S. 390), the fact is that the verdict in this case of not guilty on Count I and guilty on the remaining counts evidently reflects a fair and careful appraisal of the evidence. As to Count I, involving the year 1944, there was no evidence of wilfulness except the understatement of income, and that understatement was the smallest of any year. There was testimony by a Government witness that during the first eleven months of 1944 all of the income from the business was entered on the books. (R. 50-51.) Income from alteration work was recorded regularly in the cash receipts book during 1944, but not recorded at all in 1945, 1946, and 1947. (R. 95-96.)

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[20] Petitioner argues (Br. 29) that the action of the jury in returning a verdict after only one hour and forty-five minutes of deliberation following the supplemental instruction indicates that it was unduly influenced by the court. In *Hyde* v. *United States*, 225 U.S. 347, a jury had been unable to agree after three days and nights of deliberations. In a supplemental instruction the court suggested that they consider the possibility of guilt of some of the defendants and not of others. Shortly afterward the jury returned a verdict of guilty as to two defendants and not guilty as to two others. The defendants argued that the verdict was the result of an agreement between those jurors who believed all of the defendants to be innocent, and those who believed them all to be guilty, to exchange the two convictions for the two acquittals. This Court found no merit in the contention and affirmed the convictions. See 225 U.S. at 381-383.

There were no false entries in the 1944 books by which income was credited to a loan account (R. 575), but there were many such entries during the later years, when petitioner's wife kept the books (R. 96, 278). It was not until May, 1945, that petitioner began to acquire substantial assets with currency. (R. 215-219.) In 1944 he was renting a safe deposit box in his true name, and visited it only five times, but in February, 1945, he rented a box in an assumed name and in less than three years visited it sixty-two times. (R. 80, 131; Govt. Exs. 12-A and 13, R. 67-68, 736-742.) When the Treasury agents examined this box at the beginning of the investigation they found no currency in envelopes bearing 1944 dates, but much bearing later dates. (R. 81-82.) It was the prosecutor's theory that the bulk of the unreported income came from the sale of ready-made suits (R. 665), a line of business which petitioner did not enter until 1945 (R. 380, 451, 500-501).[21] In brief, the Government's proof as to Count I could reasonably have been deemed inferior to that for the later years, and the jury's verdict on that count depended entirely upon the inferences they were willing to draw from the understatement of income alone. As to the later years, the understatements of income were considerably greater and the record abounds with other strong indications of deliberate concealment of income and assets. The jury's ver-

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[21] In arguing the motion for a new trial, the prosecutor stated that he had said "not over two dozen words about 1944" in his argument to the jury. (R. 665.)

dict shows clearly that they understood the evidence and weighed it with discrimination.

There is no basis in the record for petitioner's contrary view (Br. 32) that the "four and one half weeks of trial" had resulted in weariness for the jury, and that the only explanation for the verdict acquitting on one count and convicting on three is the supplemental instruction, "which following the confusion in the minds of the jurors, and the weariness in their bodies, 'cumulated' in a purely compromise verdict." The reference to confusion on the part of the jury is a mere assertion with nothing in the record to support it.[22] As for their alleged weariness, the transcript shows that by agreement of counsel the case was continued from December 20, 1951, to January 2, 1952. (Tr. 522, 575.) Thus, the trial, which began on December 11 (R. 3) and was concluded on January 11 (R. 653-654), was interrupted by a twelve-day holiday which gave the jury ample opportunity to rest. The case of *United States* v. *Donnelly*, 179 F. 2d 227 (C.A. 7), quoted from by petitioner (Br. 32-33), involved cumulative errors in the reception of evidence and in instructing the jury and is obviously not in point.

We submit, in sum, that neither the imagined weariness of the jury nor the supposition that, after careful and detailed instructions, they were wholly misled by the word "compromise" in the supplemental instruction casts doubt upon the validity of

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[22] Here petitioner again mistakenly claims (Br. 32) that the Government tried to prove unreported income on the basis of the Friedberg loan entries. See footnote 15, *supra*, p. 37.

the verdict. Even if these arguments were not fatally tardy, they could not prevail.

2. In addition, however, as petitioner acknowledges (Br. 29-30), his counsel (whose competence is clear from a reading of the record) not only failed to object in the trial court to the supplemental instruction, but expressly waived the point in arguing his motion for a new trial one week later. And so his argument meets the obstacle, decisive here, that error in the court's instructions may not ordinarily be assigned on appeal unless timely objection was made at the trial. Rule 30, Federal Rules of Criminal Procedure; *Johnson* v. *United States,* 318 U.S. 189, 200-201; *Wong Tai* v. *United States,* 273 U.S. 77, 83; *Boyd* v. *United States,* 271 U.S. 104, 107-108.

This rule is founded upon familiar considerations of fairness to the court and to the parties, and of the public interest in bringing litigation to an end after a fair opportunity has been afforded to present all issues of law and fact. *United States* v. *Atkinson,* 297 U.S. 157, 159; *Johnson* v. *United States, supra,* p. 201. It serves the vital purpose of giving the trial court an opportunity to make any corrections which it thinks are proper and thus to minimize the possibility of error. *United States* v. *Furlong,* 194 F. 2d 1 (C.A. 7th), certiorari denied, 343 U.S. 950; *Finnegan* v. *United States,* 204 F. 2d 105, 115 (C.A. 8th), certiorari denied, 346 U.S. 821. The rule has exceptions, to be sure; a clear and fundamental error resulting in a grave miscarriage of justice may warrant consideration and reversal by an appellate court despite failure to raise it in

the trial court. See *Screws* v. *United States*, 325 U.S. 91, 107; *United States* v. *Atkinson, supra*, at 160. And Rule 52(b) of the Rules of Criminal Procedure, upon which petitioner relies, permits consideration of "Plain errors or defects affecting substantial rights * * * although they were not brought to the attention of the court." But these exceptions are no help to the petitioner here.

We believe, as we have argued (*supra*, pp. 47-53), that the instruction petitioner attacks would not warrant reversal under any circumstances. However this may be, the alleged error is obviously not the kind of fundamental or "plain" defect "affecting substantial rights" which could warrant a departure in this case from the salutary principle precluding the belated presentation of objections for the first time on appeal after the trial court's opportunity to meet them has passed. Nor is there substance in the suggestion (Pet. Br. 31-32) that, because the trial court's statement petitioner attacks was not part of the original formal "charge," there is no occasion for applying the requirement that objections be presented to the trial court. There was undenied and undeniable opportunity to object. Indeed, if the asserted error even approached the gravity with which petitioner now endows it, one would have expected prompt and vigorous objection on the spot. And, of course, along with the opportunity to object, there was the trial court's opportunity to take any corrective action which might have been deemed appropriate. There existed, in a word, the precise situation which calls into play the requirement of timely objection.

The failure to enter such an objection was clearly not inadvertent. In arguing his motion for a new trial a week later, petitioner's counsel five times specifically disclaimed any contention that there was error in the supplemental instruction. (R. 662-663.) And the argument that these express waivers carry "no more weight than a negative refusal to voice an objection" [23] is plainly erroneous. Petitioner's effort to overcome the decisive abandonment of his objection in the trial court is squarely opposed by what this Court said of a comparable effort in *Johnson* v. *United States*, 318 U.S. 189, 200-201 (quoting Mr. Justice Sutherland in *United States* v. *Manton*, 107 F. 2d 834, 848):

> "If the failure to enter an exception or assign error had been a mere inadvertence the matter might stand in a different light. But that view cannot be indulged. Plainly enough, counsel consciously and intentionally failed to save the point and led the trial judge to understand that counsel was satisfied. We see no warrant for the exercise of our discretion to set aside standing rules, so necessary to the due and orderly administration of justice, and review the challenge to the legal accuracy of the charge where, as here, the failure of the judge to follow the text of the requested instruction was, at the last, induced by the action of counsel * * *."

Any other course would not comport with the

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[23] The quoted phrase appears on page 5 of petitioner's brief in reply to the Government's brief in opposition to certiorari.

standards for the administration of criminal justice. We cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him. However unwise the first choice may have been, the range of waiver is wide. Since the protection which could have been obtained was plainly waived, the accused cannot now be heard to charge the court with depriving him of a fair trial. * * *

CONCLUSION

Petitioner was properly convicted. The evidence was sufficient to warrant submission of the case to the jury and to support the verdict. The judgment should be affirmed.

Respectfully submitted.

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SEPTEMBER, 1954.

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APPENDIX

GOVERNMENT'S EXHIBIT 2

In re: David F. Friedberg
Columbus, Ohio
Case No. 5972

Assets	Account No.	In name of	12-31-'41	12-31-'42	12-31-'43	12-31-'44	12-31-'45
Cash on Hand			$00.00	$00.00	$00.00	$00.00	$2,000.00
Bank Accounts							
Ohio National Bank, High-Town Office	Checking	Buckeye Tailoring Company	635.34	641.27	2,669.35	4,850.08	571.88
Park Federal Savings & Loan Ass'n.	3,472	Frances F. or David Friedberg	874.41	0	0	0	0
First Federal Savings & Loan Ass'n.	8,070	D. F. or F. F. Handler	4,133.94	3,997.26	4,080.98	6,061.46	854.38
First Federal Savings & Loan Ass'n.	12,951	A. Wayne Friedberg		0	312.13	0	
First Federal Savings & Loan Ass'n.	13,980	A. Wayne or Frances Friedberg			0	886.73	1,007.50
First Federal Savings & Loan Ass'n.	13,889	Elaine or Frances Friedberg			0	276.77	302.25
Buckeye State Building and Loan Company	98,575	Frances F. or David Friedberg		0	614.97	0	
Buckeye State Building and Loan Company	70,855	Frances F. or David Friedberg			0	3,475.03	0
Franklin Federal Savings & Loan Ass'n.	12,743	Frances or David Friedberg			0	1,413.29	2,047.37
Dollar Federal Savings and Loan Ass'n.	3,280	Frances F. or David Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,303	David or Frances Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,342	Elaine F. or Frances Friedberg					
Dollar Federal Savings and Loan Ass'n.	3,343	A. Wayne or Frances Friedberg					
Securities							
Stocks			1,970.00	1,970.00	1,970.00	1,970.00	0
U. S. Bonds, Series E			0	150.00	3,562.50	7,931.25	9,487.50
U. S. Bonds, Series G, and Coupon					0	0	31,000.00
Brokerage Account—Vercoe and Company in name of A. Wayne Friedberg							0
Buckeye Tailoring Company—Merchandise Inventory			855.19	4,260.00	4,822.00	5,691.06	3,102.00
Buckeye Tailoring Company—Equipment (adjusted basis)			600.00	540.00	480.00	420.00	360.00
Household—Furnishings			1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
Unimproved property—Roosevelt Avenue			1,450.00	0			
Unimproved property—O'Shaughnessy Hills			200.00	200.00	200.00	200.00	200.00
Total Assets			$12,218.88	$13,258.53	$20,211.93	$34,675.67	$54,432.88
Liabilities							
Note Payable—Nathan Weiss			450.00	400.00	300.00	250.00	0
Net Worth			$11,768.88	$12,858.53	$19,911.93	$34,425.67	$54,432.88
Less: Non-taxable capital gain			0	0	0	0	425.57
Net Worth			$11,768.88	$12,858.53	$19,911.93	$34,425.67	$54,007.31
Less: Prior year net worth				11,768.88	12,858.53	19,911.93	34,425.67
Taxable net worth increase				$1,089.65	$7,053.40	$14,513.74	$19,581.64
Add:							
Personal Expenses							
Life Insurance Premiums						$653.51	$652.61
Income Tax						193.43	715.20
Rental—personal residence						780.00	780.00
Other expenses paid by check						0	439.73
Total						$1,626.94	$2,587.54
Net Worth Increase and personal living expenses						$16,140.68	$22,169.18
Less: Standard Deduction						500.00	500.00
Net Income						$15,640.68	$21,669.18

APPENDIX

GOVERNMENT'S EXHIBIT 2

vid F. Friedberg
umbus, Ohio
972

Assets	Account No.	In name of	12-31-'41	12-31-'42	12-31-'43	12-31-'44	12-31-'45	12-31-'46	12-31-'47
and			$00.00	$00.00	$00.00	$00.00	$2,000.00	$5,000.00	$14,842.36
unts									
tional Bank, High-Town Office	Checking	Buckeye Tailoring Company	635.34	641.27	2,669.35	4,850.08	571.88	1,010.74	1,123.18
leral Savings & Loan Ass'n	3,472	Frances F. or David Friedberg	874.41	0	0	0	0	0	0
leral Savings & Loan Ass'n	8,070	D. F. or F. F. Handler	4,133.94	3,997.26	4,080.98	6,061.46	854.38	5,434.23	0
leral Savings & Loan Ass'n	12,951	A. Wayne Friedberg		0	312.13	0			
leral Savings & Loan Ass'n	13,980	A. Wayne or Frances Friedberg			0	886.73	1,007.50	1,379.77	0
leral Savings & Loan Ass'n	13,889	Elaine or Frances Friedberg			0	276.77	302.25	804.50	0
State Building and Loan Company	98,575	Frances F. or David Friedberg		0	614.97	0			
State Building and Loan Company	70,855	Frances F. or David Friedberg			0	3,475.03	0		
Federal Savings & Loan Ass'n	12,743	Frances or David Friedberg			0	1,413.29	2,047.37	2,088.52	0
ederal Savings and Loan Ass'n	3,280	Frances F. or David Friedberg						0	6,000.00
ederal Savings and Loan Ass'n	3,303	David or Frances Friedberg						0	6,000.00
ederal Savings and Loan Ass'n	3,342	Elaine F. or Frances Friedberg						0	1,100.00
ederal Savings and Loan Ass'n	3,343	A. Wayne or Frances Friedberg						0	1,415.00
			1,970.00	1,970.00	1,970.00	1,970.00	0	0	4,757.54
nds, Series E			0	150.00	3,562.50	7,931.25	9,487.50	9,487.50	9,487.50
nds, Series G, and Coupon					0	0	31,900.00	41,000.00	61,000.00
Account—Vercoe and Company in name of A. Wayne Friedberg							0	1,000.00	0
ailoring Company—Merchandise Inventory			855.19	4,260.00	4,822.00	5,691.06	5,102.00	6,863.00	8,993.60
ailoring Company—Equipment (adjusted basis)			600.00	540.00	480.00	420.00	360.00	300.00	240.00
—Furnishings			1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00
ed property—Roosevelt Avenue			1,450.00	0					
ed property—O'Shaughnessy Hills			200.00	200.00	200.00	200.00	200.00	200.00	200.00
al Assets			$12,218.88	$13,258.53	$20,211.93	$34,675.67	$54,432.88	$76,068.26	$116,659.18
Liabilities									
ayable—Nathan Weiss			450.00	400.00	300.00	250.00	0	0	0
Worth			$11,768.88	$12,858.53	$19,911.93	$34,425.67	$54,432.88	$76,068.26	$116,659.18
on-taxable capital gain			0	0	0	0	425.57	0	0
Worth			$11,768.88	$12,858.53	$19,911.93	$34,425.67	$54,007.31	$76,068.26	$116,659.18
Prior year net worth				11,768.88	12,858.53	19,911.93	34,425.67	54,432.88	76,068.26
le net worth increase				$1,089.65	$7,053.40	$14,513.74	$19,581.64	$21,635.38	$40,590.92
Expenses									
urance Premiums						$653.51	$652.61	$651.66	$302.21
Tax						193.43	715.20	(6.20)	210.00
—personal residence						780.00	780.00	780.00	810.00
xpenses paid by check						0	439.73	474.50	863.78
tal						$1,626.94	$2,587.54	$1,899.96	$2,185.99
rth Increase and personal living expenses						$16,140.68	$22,169.18	$23,535.34	$42,776.91
tandard Deduction						500.00	500.00	500.00	500.00
t Income						$15,640.68	$21,669.18	$23,035.34	$42,276.91